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4 MICHAEL BRENT ROTHENBERG, et al.,
5 Plaintiffs,
6 v.
7 FEDERAL DEPOSIT INSURANCE
8 CORPORATION, et al.,
9 Defendants.

10 Case No. 23-cv-01603-JST

11 **ORDER DENYING MOTIONS FOR
12 STAY**

13 Re: ECF No. 13

14 FEDERAL DEPOSIT INSURANCE
15 CORPORATION,
16 Plaintiff,
17 v.
18 MICHAEL BRENT ROTHENBERG,
19 Defendant.

20 Case No. 23-cv-01606-JST

21 Re: ECF No. 13

22 Before the Court are the Federal Deposit Insurance Commission’s (“FDIC”) motions to
23 stay these actions. Case No. 23-cv-01603-JST, ECF No. 13; Case No. 23-cv-01606-JST, ECF No.
24 13. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds
25 the matters suitable for disposition without a hearing.

26 FDIC seeks 90-day stays of these proceedings pursuant to 12 U.S.C. § 1821(d)(12)(A),
27 which provides, in relevant part, “After the appointment of a . . . receiver for an insured depository
institution, the . . . receiver may request a stay for a period not to exceed . . . 90 days.” A court is
required to grant the stay upon request by the receiver. *See id.* § 1821(d)(12)(B) (“Upon receipt of
a request by any . . . receiver . . . for a stay of any judicial action or proceeding in any court with
jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.”); *Praxis*

1 *Props, Inc. v. Colonial Sav. Bank*, 947 F.2d 49, 67 (3d Cir. 1991) (“[T]he language of [S]ection
2 1821(d)(12)(B) is unmistakably mandatory.”); *Damiano v. FDIC*, 104 F.3d 328, 333 n.9 (11th Cir.
3 1997) (“[12 U.S.C. § 1821(d)(12)] allows the [receiver] to request a ninety-day stay in the
4 litigation after its appointment and requires the court to grant such a stay.”); *Hunter v. Citibank*,
5 N.A., No. C 09-02079 JW, 2011 WL 7462143, at *1 n.3 (N.D. Cal. May 5, 2011) (“[12 U.S.C.]
6 Section 1821(d)(12)(A) provides that the FDIC as receiver is entitled to a stay for up to 90 days in
7 any judicial action to which it becomes a party.” (alteration in original) (quoting *Cipponeri v.*
8 *FDIC*, No. 1:09-cv-0688 AWI DLB, 2009 WL 1861837, at *2 (E.D. Cal. June 29, 2009))).

9 Courts have interpreted Section 1821(d)(12) to entitle the receiver “to a stay whose outer
10 bound is 90 days after the receiver’s appointment (no matter when the receiver requests the stay).”
11 *Praxis Props.*, 947 F.2d at 70; *see id.* at 71; *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 293 (3d Cir.
12 2005) (noting that the Court of Appeals “granted the FDIC’s request for a ninety day stay from the
13 date of its appointment as receiver); *Protzmann v. Hist. Real Est. and Finance*, No. CV 08-03385
14 SJO (JCx), 2009 WL 10672326, at *2 (C.D. Cal. Jan. 23, 2019). “In other words, regardless of
15 when the receiver requests the stay, the 90-day stay . . . must expire 90 days after the receiver’s
16 appointment.” *Protzmann*, 2009 WL 10672326, at *2.

17 FDIC, however, requests a stay of 90 days “to commence from the date of” this Court’s
18 orders on its motions to stay. *E.g.*, Case No. 23-cv-01606-JST, ECF No. 13-1 at 2. In its motions,
19 FDIC indicates that it was appointed as receiver of Silicon Valley Bank on March 10, 2023. *E.g.*,
20 Case No. 23-cv-01606-JST, ECF No. 13, at 3. The statute thus entitled FDIC to a stay until June
21 8, 2023. As a result, “FDIC is no longer entitled to a stay of this litigation.” *Protzmann*, 2009 WL
22 10772326, at *2. To conclude otherwise would permit FDIC to “‘litigate this case for years and
23 then request a stay for 90 days whenever it pleased,’ which would afford the FDIC ‘carte blanche
24 to stay a judicial proceeding at any time it feels it needs a 90-day break from the rigors of
25 litigation.’” *Id.* (first quoting *Nassirpour v. FDIC*, No. CV 08-7164-GHK (AJWx), 2008 WL
26 5412432, at *3 (C.D. Cal. Dec. 29, 2008); and then quoting *Praxis Props.*, 947 F.3d at 69).

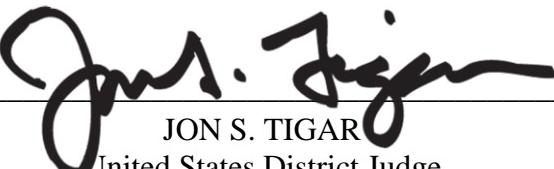
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1 For these reasons, FDIC's motions are denied.
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IT IS SO ORDERED.

3 Dated: July 11, 2023
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5 JON S. TIGAR
6 United States District Judge
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United States District Court
Northern District of California